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STATE OF NEBRASKA
DEPARTMENT OF EDUCATION

Statements were made by the attorneys for Petitioner and Respondent. No additional evidence was received by the Commission. After argument, the Commission deliberated the matter.

II. FINDINGS OF FACT

Upon due consideration of the entire record, the Commission makes the following Findings of Fact:

1. The Petitioner is Joe E. Lutejeharms, Commissioner of Education and the Respondent is Max Allen, who holds a lifetime Nebraska Public School Certificate -7457, Type 1, Rank A, Level 7, endorsed as Superintendent K-12, Social Science 7-12, Guidance and Counseling K-12, Elementary Education K-8, and Language & Social Science 7-9. The Respondent has held a certificate from the Nebraska Department of Education for approximately 37 years.
2. On October 16, 1990, the Respondent completed and filed an Assurance Statement For Accredited School Systems form with the Nebraska Department of Education as required pursuant to Title 92, Nebraska Administrative Code, Chapter 10 (Rule 10), which affirmed that the North Loup Scotia Schools had complied with all applicable accreditation regulations of Rule 10 for the 1990-91 school year. On September 12, 1991, the Respondent completed and filed an Assurance Statement For Accredited School Systems form with the Nebraska Department of Education which affirmed that the North Loup Scotia Schools had complied with all applicable accreditation regulations of Rule 10 for the 1991-92 school year. A copy of these Assurance Statements is attached and marked collectively as exhibit "A". The Respondent, in his duties as the Superintendent of the North Loup Scotia Public Schools, did not report to the residents of the school district the results of the standardized norm-referenced assessment instrument used by the school during the 1990-91 and the 1991-92 school years as required by Rule 10, Section 004.02E2.
3. The respondent completed and filed the 1991-92 Budget Statement for the North Loup Scotia Schools that did not include the actual or estimated amounts for the Total Budget of Expenditures, the Total Requirements, and the Net Cash Balance for the 1991-92 fiscal year as required by the Nebraska Budget Act. A copy of the 1991-92 Budget Statement prepared and filed by the Respondent is attached and marked as exhibit "B". The total Budget of Expenditures (line 77, column 4) was not shown because the Respondent failed to add the numbers in the column on the Budget Statement which would have shown the total Budget of Expenditures. The Respondent failed to list a Net Cash Balance (line 80, column 4), although an audit of the school showed that the school had a cash balance of \$270,159 at the beginning of the 1991-92 Fiscal Year. The Total Requirements (line 79, column 4) was not shown because the Respondent failed to add the Total Budget of Expenditures figure (line 77, column 4) with the Necessary Cash Reserve figure (line 78, column 4). The Respondent, in his duties as the Superintendent of the North Loup Scotia Public Schools, was responsible for preparing and administering the budget of the school.

4. The North Loup Scotia School Board desired, although it took no Board action in the matter, that the Respondent include a \$150,000 Cash Reserve in the 1991-92 Budget Statement. The Board asked the Respondent at a board meeting if a formal motion to establish such a cash reserve in the 1991-92 Budget Statement was necessary, and the Respondent informed the Board that such a motion was not necessary because the Budget Statement prepared included \$150,000 in reserve. The Respondent completed and filed the 1991-92 Budget Statement for the North Loup Scotia Schools (exhibit "B") that did not show a Necessary Cash Reserve (line 78, column 4). Subsequently, on July 27, 1992, the North Loup Scotia Board held a hearing to amend the 1991-92 Budget Statement to provide for a Necessary Cash Reserve. The Respondent, in his duties as the Superintendent of the North Loup Scotia Public Schools, was responsible for preparing the budget of the school.

5. The Nebraska Budget Act requires balanced budgets for political subdivisions, including school districts. Therefore, Budget Statements filed by school districts require that Total Requirements equal Total Receipts Available. Budgeted Expenditures (exhibit "B", line 77, column 4) plus Necessary Cash Reserve (exhibit "B", line 78, column 4) will equal Total Requirements (exhibit "B", line 79, column 4). Net Cash Balance (exhibit "B", Line 80, column 4) plus Total Receipts before Property Taxes (exhibit "B", Line 128, column 4) plus Property Taxes (exhibit "B", line 129, column 4) will equal Total Receipts Available (exhibit "B", line 130, column 4).

III. DISCUSSION

The Petitioner alleges that the Respondent failed to perform various responsibilities required of the Superintendent of Schools. Evidence presented to the Committee showed such failure to act by Respondent is a violation of Section 004.04F, however, no evidence was presented to the Commission that the acts by the Respondent were intentional nor did the evidence show that the School District was harmed or Respondent benefited in any way.

The Petitioner also alleges that the suspension of Respondent's Nebraska Driver's License was a violation of his duty to give prompt notice to the Employer of any change in availability of service. The record before the Commission is inadequate to find a violation of this standard.

IV. CONCLUSIONS OF LAW

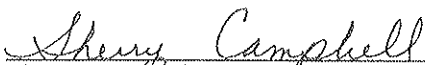
1. The Commission has jurisdiction in this case and all proceedings have been in conformance with applicable constitutional statutory and regulatory requirements.

2. The Petitioner has proven by a preponderance of the evidence that Respondent, Max Allen, has violated Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04F which states: "The Educator: shall with reasonable diligence, attend to the duties of his or her professional duties."

IV. FINAL ORDER

The Nebraska Professional Practices Commission orders that Max Allen, holder of Nebraska Public Certificate No. -7457, Type 1, Rank A, Level 7, endorsed as Superintendent K-12, Social Science 7-12, Guidance and Counseling K-12, Elementary Education K-8, and Language & Social Science 7-9, be publicly reprimanded, sanctioned and criticized for unprofessional conduct.

Dated the 2nd day of March, 1993. The Nebraska Professional Practices Commission by


Sherry Campbell, Chairperson
Nebraska Professional Practices Commission

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Findings of Fact, Conclusions of Law and Final Order dated 3/2/93, for case 92027, has been served on John F. Recknor, Attorney for Respondent by U.S. mail, postage prepaid, and hand delivered to Brian Halsted, Attorney for Petitioner, on this 2nd day of March, 1993 at the following addresses:

John Recknor
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Kylie Smith, Staff Assistant
Nebraska Professional Practices Commission